HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:27857 OF 2005

Dated: 12.06.2007

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Between:

Dr. Jillela Prabhavathi, B.H.M.S.,
D/o J. John, R/o Kondajatur village,
Panyam Mandal, Kurnool District. ..Petitioner

And

1. The Commissioner, Department of
   Ayush, Government of A.P., Secunderayad
   and others. ..Respondents.

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HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&

HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.V.M.P.No:1958 of 2006 & W.P.M.P.No:35736 of 2005

&

WRIT PETITION No:27857 OF 2005

ORDER: (per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition has been filed by the petitioner aggrieved by the order, dated 23.11.2005 passed by the A.P. Administrative Tribunal, Hyderabad, in O.A.No.6910 of 2004.

When this vacate stay petition is taken up for hearing, both the learned counsel have agreed to dispose of the main writ petition.

It is the case of the petitioner, who is an applicant in O.A.No.2017 of 2005 and the 4th respondent in O.A.No.6910 of 2005 that the 1st respondent issued a notification dated 17.7.2003 inviting applications from the qualified candidates for the post of Homeopathic doctors on contract basis. The petitioner, who belongs to Scheduled caste community, being the qualified candidate applied for the same and she was provisionally selected by the Committee on 22.11.2003, but the appointment orders were not issued on the ground that the 4th respondent made a complaint as to the genuineness of the caste certificate. As the enquiry was prolonged, she addressed a letter to the 1st respondent on 6.11.2004 and 17.11.2004 withdrawing her claim for the post of Homeo Doctor. Later, she reconciled and requested the 1st respondent to ignore the above said letters. The 4th respondent also filed O.A.No.6910 of 2005 seeking a direction to the respondents to appoint him as Homeo Doctor under S.C.(D) category while making allegations against the petitioner herein. Hence, the Tribunal passed interim order to keep the post vacant. Though she filed vacate petition, but the tribunal did not pass any orders. Hence, she was constrained to file O.A.No.2017 of 2005 seeking appointment as the verification as

to her caste certificate is completed by holding that it is a genuine and she obtained interim direction on 4.5.2005 to consider her case. Pursuant to the interim orders, the 1st respondent issued appointment orders. Subsequently, in O.A.No.2017 of 2005, the 4th respondent was impleaded.

On the other hand, the 4th respondent herein contended before the Tribunal that the petitioner herein had foregone her claim on earlier occasion and when she has received back the caste certificate from the official respondents, she cannot claim appointment for the above post.

On hearing the rival contentions of both the parties, the Tribunal having observed that the petitioner herein was provisionally selected and her caste certificate was challenged and hence, no appointment order was issued and prior to issuance of appointment orders and completion of enquiry as to the genuineness of caste certificate, she requested the official respondents to cancel her appointment and therefore, she is not entitled to seek appointment, directed the official respondents to appoint the 4th respondent herein against the available vacancy, which has been kept vacant as per the interim orders of the tribunal dated 23.2.2005 subject to usual conditions for appointment as medical officer on contract basis and if there is no vacancy by ousting the petitioner herein. It is also further directed that since the petitioner has already joined, she may be continued if the official respondents so choose and if there is still a vacancy after the 4th respondent herein is appointed against a vacancy kept vacant as per interim orders of the Tribunal dated 23.2.2005. Having aggrieved by the same, the present writ petition is filed.

The official respondents filed their counter-affidavit contending that the tenure of the Medical officers, who were selected pursuant to notification dated 17.7.2003, is expired by December, 2005, but the Government in G.O.Ms.No.224, Health Medical and Family Welfare

(I.2) Department, dated 17.6.2003 has ordered among other things, that subject to the further condition that the total tenure of any Contractual appointment, including extension, if any, shall not exceed three years, the Contractual appointment shall be terminated automatically. Accordingly, one year period of contract appointment of all those, who are appointed and continuing in service satisfactorily on contract basis is extended up to December, 2006. As such, the 4th respondent was appointed temporarily on contract basis for one year in pursuance of the judgment of the Tribunal in the existing vacancy and not in the place of the petitioner herein and not by ousting the petitioner, who joined duty on 12.5.2005 pursuant to the appointment as Medical Officer complying with the directions of the Tribunal in O.A.No.2017 of 2005. It is also contended that both of them are continuing in service.

In view of the statement given in the counter-affidavit that that both the petitioner and the 4th respondent are continuing on contract basis in their respective posts and in view of the apprehension of the petitioner that she may be ousted as per the orders of the Tribunal, without expressing any opinion on the merits of the case, We feel it appropriate to direct the official respondents to continue the petitioner as well as the 4th respondent on contract basis in their respective posts as per the rules as well as the guidelines issued by the Government.

With the above observations, the writ petition is disposed of. No order as to costs. Consequently, the above W.V.M.P. and W.P.M.P. are closed.

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Justice T. Meena Kumari

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Justice G. Chandraiah

Date: 12th June, 2007
Nn/Gurc.

HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:27857 OF 2005

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

12/06/2007

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CIVIL REVISION PETITION No:744 OF 2005

28.1.2006